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ABD GHANI GOLAMDIN v. UNIVERSITI UTARA MALAYSIA & ORS

FEDERAL COURT, PUTRAJAYA
TENGKU MAIMUN TUAN MAT CJ
ZABARIAH MOHD YUSOF FCJ
B HASNAH MOHAMMED HASHIM FCJ
[CIVIL APPEAL NO: 01(f)-18-07-2020(K)]
4 SEPTEMBER 2023

C **Abstract** – *(i) Only where there is a valid agreement in existence does the enforceability of an agreement come into play and it is at this stage that vitiating factors, ie, fraud, forgery and conspiracy to defraud, would be considered by the court; (ii) Section 92 of the Evidence Act 1950 only excludes oral evidence as to contradict the terms of the agreement. When there is a plea denying the agreement, oral evidence is admissible in support of that plea. Section 92 is not attracted when the existence and validity of the agreement is in question.*

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CONTRACT: *Agreement – Authenticity, validity and enforceability – Employee claimed for breach of oral agreement reduced into written agreement – Agreement on salary, increment, allowances, incentives, sales commercialise and compensation – Whether there was valid agreement – Whether alleged agreement authorised or approved – Whether contents of agreement proven – Whether agreement authentic and valid in absence of vitiating factors such as fraud, forgery and conspiracy to defraud – Whether Turquand rule applied*

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EVIDENCE: *Documentary evidence – Agreement – Validity – Employee claimed for breach of oral agreement reduced into written agreement – Agreement on salary, increment, allowances, incentives, sales commercialise and compensation – Agreement adduced and admitted as evidence – Whether validity of agreement challenged – Evidence Act 1950, ss. 91 & 92*

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The appellant was a full-time employee of the first respondent. He was seconded to the second respondent, a company wholly owned by the first respondent, and later to the third respondent, a company wholly owned by the second respondent. The appellant claimed against the respondents, at the
H High Court, for the sum of RM15,619,916.09 on the grounds that: (i) the respondents breached an oral agreement entered into between him and the late then Vice-Chancellor ('VC') of the first respondent, which was witnessed by the Chief Executive Officer ('PW4') of the second respondent; (ii) the oral agreement was reduced into a written agreement dated 1 July 2004 ('exh. P22'); and (iii) in return for his service, the oral agreement provided
I that the appellant's starting salary was in the range of RM15,000 with a yearly increment and allowances as well as other incentives. On top of that,

the appellant was also entitled to be paid the sales commission of at least 10% to 15% for projects secured through the first respondent's companies, bonus and other incentives depending on the company's profits, insurances and gratuity and compensation if the appellant was terminated for service. The High Court dismissed the appellant's claim on the grounds that, *inter alia*, (i) the appellant and PW4 were unable to prove that there was, in fact, an offer made to the appellant on the alleged remuneration and there was also no evidence to prove the purported authorisation by the VC for PW4 to execute the agreement dated 1 July 2004; and (ii) exh. P22 was an afterthought and the appellant failed to show that the agreement dated 1 July 2004 was authentic. The appellant's appeal to the Court of Appeal bore no success. Hence, the present appeal. In support of his appeal, the appellant submitted that: (i) exh. P22 was deemed to be an authentic and valid agreement in the absence of any vitiating factors such as fraud, forgery and conspiracy to defraud; (ii) the indoor management rule, as propounded in the case of *Royal British Bank v. Turquand* ('*Turquand* rule'), applied; and (iii) since exh. P22 had been properly adduced and admitted as evidence, pursuant to ss. 91 and 92 of the Evidence Act 1950 ('Act'), it was not open to the respondents to challenge the validity of P22.

Held (dismissing appeal with costs)
Per Tengku Maimun Tuan Mat CJ delivering the judgment of the court:

(1) The validity and enforceability of an agreement or a contract are two different and separate issues which are to be dealt with separately. Only where there is a valid agreement in existence does the enforceability of the agreement come into play. It is at this stage that the vitiating factors, as alluded by the appellant, if at all, would be considered. The agreement dated 1 July 2004, although was admitted by an exhibit by the High Court, was found to be not an authentic agreement. This finding of fact was made upon consideration of the factual circumstances, particularly due to the absence of authority and non-compliance with internal procedures of the respective respondent companies and not due to the presence of any vitiating factors. The appellant failed to prove his claim. He failed to prove that the terms of the alleged remuneration were, in fact, offered to him and/or that the second and third respondents had authorised or approved the execution of exh. P22. The findings of the High Court were not perverse given the testimony of the respondents' witnesses, who were former directors of the second and third respondents, that they never approved and had no knowledge of exh. P22. Their testimonies were supported by the fact that there was absent of any contemporaneous document in the form of the Board of Director's resolution or approval to pay the amount claimed by the appellant. In other words, the appellant failed to prove the contents of exh. P22. (paras 19 & 21-23)

(2) The appellant attempted to overcome the respondents' case by the *Turquand* rule where, by this rule, an outsider contracting with a company in good faith was entitled to assume that the internal requirements and procedures of the company had been complied with. However, the appellant's reliance on the *Turquand* rule was misplaced as the facts clearly showed that the appellant was not an outsider but an insider to the third respondent, being its managing director from 2003 to 2011. (paras 24 & 26)

(3) Exhibit P22 was all along denied by the respondents. The document was placed in Part C of the common agreed bundle of documents, which meant that its authenticity, existence and contents were disputed. Section 92 of the Act only excluded oral evidence as to contradict the terms of the agreement. When there is a plea denying the agreement, oral evidence is admissible in support of that plea. The respondents were not seeking to admit evidence to contradict the terms of the agreement but to show that there was never an agreement in the first place. That section was not attracted when the existence and validity of the agreement was in question. (paras 28 & 29)

Bahasa Melayu *Headnotes*

Perayu adalah pekerja sepenuh masa responden pertama. Dia telah dipinjamkan pada responden kedua, sebuah syarikat yang dimiliki penuh oleh responden pertama, dan kemudian pada responden ketiga, sebuah syarikat yang dimiliki penuh oleh responden kedua. Perayu memulakan tuntutan terhadap responden-responden, di Mahkamah Tinggi, menuntut sejumlah RM15,619,916.09 atas alasan: (i) responden-responden melanggar perjanjian lisan yang dimeterai antara perayu dengan Naib Canselor ('NC') responden pertama ketika itu, yang sudah meninggal dunia, yang disaksikan oleh Ketua Pegawai Eksekutif ('PW4') responden kedua; (ii) perjanjian lisan ini kemudian diturunkan menjadi perjanjian bertulis bertarikh 1 Julai 2004 ('eksh. P22'); dan (iii) sebagai balasan perkhidmatannya, perjanjian lisan tersebut menyatakan bahawa gaji permulaan perayu adalah dalam lingkungan RM15,000 dengan kenaikan dan elaun tahunan serta lain-lain insentif. Di samping itu, perayu juga berhak dibayar komisen jualan sekurang-kurangnya 10% hingga 15% untuk projek-projek yang diterima melalui syarikat-syarikat responden pertama, bonus dan lain-lain insentif bergantung pada keuntungan, insurans dan gratuiti syarikat dan pampasan jika perkhidmatan perayu ditamatkan. Mahkamah Tinggi menolak tuntutan perayu atas alasan, antara lain, (i) perayu dan PW4 tidak berjaya membuktikan bahawa perayu sememangnya ditawarkan gaji yang didakwa dan tiada juga keterangan untuk membuktikan dakwaan kebenaran yang diberi oleh NC kepada PW4 untuk memeterai perjanjian bertarikh 1 Julai 2004; dan (ii) eksh. P22 adalah satu fikiran semula dan perayu gagal menunjukkan bahawa perjanjian bertarikh 1 Julai 2004 tersebut sah. Rayuan perayu ke Mahkamah Rayuan juga tidak

berhasil. Maka timbul rayuan ini. Menyokong rayuannya, perayu menghujahkan: (i) eksh. P22 dianggap perjanjian yang sah dan berkuat kuasa dengan ketiadaan faktor-faktor yang menjejaskan seperti penipuan, pemalsuan dan konspirasi untuk menipu; (ii) kaedah pengurusan dalaman, yang diajukan dalam kes *Royal British Bank v. Turquand* ('kaedah *Turquand*'), terpakai; dan (iii) oleh kerana eksh. P22 telah dikemukakan dengan teratur dan diterima sebagai keterangan, bawah ss. 91 dan 92 Akta Keterangan 1950 ('Akta'), responden-responden tidak boleh mencabar kesahan P22.

Diputuskan (menolak rayuan dengan kos)
Oleh Tengku Maimun Tuan Mat KHN menyampaikan penghakiman mahkamah:

(1) Kesahan dan kebolehkuatkuasaan satu-satu perjanjian atau kontrak adalah dua isu berbeza dan asing yang perlu ditangani secara berasingan. Hanya apabila wujud perjanjian yang sah barulah kebolehkuatkuasaan perjanjian tersebut beroperasi. Pada peringkat inilah faktor-faktor menjejaskan, seperti yang didakwa oleh perayu, jika pun ada, akan dipertimbangkan. Perjanjian bertarikh 1 Julai 2004, walaupun diterima sebagai ekshibit oleh Mahkamah Tinggi, didapati sebagai perjanjian yang tidak sah. Dapatan fakta ini dibuat berasaskan pertimbangan hal-hal keadaan fakta, khususnya ketiadaan kebenaran dan ketakpatuhan tatacara-tatacara dalaman syarikat-syarikat responden-responden dan bukan kerana kewujudan faktor-faktor yang menjejaskan. Perayu gagal membuktikan tuntutannya. Dia gagal membuktikan bahawa terma-terma gaji yang didakwa sememangnya ditawarkan padanya dan/atau responden kedua dan ketiga telah membenarkan atau meluluskan pemeteraian eksh. P22. Dapatan-dapatan Mahkamah Tinggi tidak berlawanan, melihat pada keterangan-keterangan saksi-saksi responden-responden yang dahulunya bertindak sebagai pengarah-pengarah responden kedua dan ketiga, bahawa mereka tidak pernah meluluskan dan tidak tahu tentang eksh. P22. Keterangan-keterangan mereka disokong oleh fakta bahawa tiada dokumen semasa dalam bentuk resolusi Lembaga Pengarah atau kebenaran untuk membayar jumlah yang dituntut oleh perayu. Dalam erti kata lain, perayu gagal membuktikan kandungan eksh. P22.

(2) Perayu cuba melemahkan kes responden-responden dengan membangkitkan kaedah *Turquand*, yang menetapkan bahawa orang luar yang berkontrak dengan syarikat dengan suci hati berhak menganggap bahawa syarat-syarat dan tatacara-tatacara dalaman syarikat tersebut telah dipatuhi. Walau bagaimanapun, sandaran perayu pada kaedah *Turquand* adalah salah kerana fakta-fakta nyata mendedahkan bahawa perayu bukanlah orang luar tetapi sebenarnya orang dalam responden ketiga kerana dia bertindak sebagai Pengarah Urusan dari 2003 hingga 2011.

(3) Ekshibit P22 dinafikan oleh responden-responden pada setiap masa material. Dokumen tersebut diletakkan dalam Bahagian C dalam ikatan dokumen yang dipersetujui dan ini bermakna kesahan, kewujudan dan kandungannya dipertikaikan. Seksyen 92 Akta hanya menolak keterangan lisan yang bercanggah dengan terma-terma perjanjian. Apabila tiada akuan yang menafikan perjanjian, keterangan lisan boleh diterima demi menyokong akuan tersebut. Responden-responden tidak memohon untuk menerima keterangan yang bercanggah dengan terma-terma perjanjian tetapi berkehendak menunjukkan bahawa, dari awal lagi, tidak wujud perjanjian. Seksyen ini tidak dibangkitkan apabila kewujudan dan kesahan perjanjian dipertikaikan.

Case(s) referred to:

Global Globe Property (Melawati) Sdn Bhd v. Jangka Prestasi Sdn Bhd [2020] 6 CLJ 1 CA ***(refd)***

John Lo Thau Fah v. Face Resort Berhad [2007] 8 CLJ 484 HC ***(refd)***

Kang Hai Holdings Sdn Bhd & Anor v. Lee Lai Ban [2018] 2 CLJ 550 FC ***(refd)***

KL Engineering Sdn Bhd & Anor v. Arab Malaysia Finance Bhd [1994] 2 CLJ 480 SC ***(refd)***

Letchumanan Chettiar Alagappan (As Executor To SL Alameloo Achi (Deceased) & Anor v. Secure Plantation Sdn Bhd [2017] 5 CLJ 418 FC ***(refd)***

Pekan Nenas Industries Sdn Bhd v. Chang Ching Chuen & Ors [1998] 1 CLJ 793 FC ***(refd)***

Prest v. Prest & Ors [2013] 4 All ER 673 ***(refd)***

Royal British Bank v. Turquand [1843-60] All ER Rep 435 ***(refd)***

Sri Kelangkota-Rakan Engineering JV Sdn Bhd & Ors v. Arab-Malaysian Prima Realty Sdn Bhd & Ors [2001] 1 CLJ 779 CA ***(refd)***

Legislation referred to:

Contracts Act 1950, s. 2(e)

Evidence Act 1950, ss. 91, 92

For the appellant - Harjinder Kaur & Mohd Farhan Abdul Ghani; M/s Shahrizat Rashid & Lee

For the respondent - Kanesh Sundrum & Nurul Jannah Zakariah; M/s Kanesh Sundrum & Co

[Editor's note: Appeal from Court of Appeal; Civil Appeal No: K-01(NCVC)(W)-205-03-2018 (affirmed); For the High Court judgment, please see Abd Ghani Golamdin v. Universiti Utara Malaysia & Ors [2018] CLJU 2020; [2018] 1 LNS 2020 (affirmed).]

Reported by Najib Tamby

JUDGMENT

Tengku Maimun Tuan Mat CJ:

Introduction

[1] This appeal arose out of the dismissal of the appellant's claim against the respondents for *inter alia* arrears of salary, commissions, compensation and bonus pursuant to a purported oral agreement made in 2002 and a purported written agreement dated 1 July 2004.

[2] The appellant was a full-time employee of the Universiti Utara Malaysia (the first respondent), a higher educational institution. Uniutama Management Holdings Sdn Bhd (the second respondent) is a company wholly owned by the first respondent while Uniutama Solution Sdn Bhd (the third respondent) is a company wholly owned by the second respondent.

Background Facts

[3] To develop its Information and Technology (ICT) system, the first respondent employed the appellant in 1989 as its Senior System Analyst. In 1992, the appellant was elevated as the Chief System Analyst and in 1999, was appointed as the 'Pengarah Pusat Komputer' in the first respondent.

[4] During the appellant's tenure as the Pengarah Pusat Komputer, the appellant played a major role in developing the ICT within the first respondent which led to the creation of a computer known as 'SerindIT'. And this made the first respondent the first local university to create its own computer. In view of this development, the first respondent structured a plan to commercialise the 'SerindIT' computer.

[5] On 16 February 2002, the appellant was seconded to the second respondent. As per the letter dated 28 January 2002, the first respondent will continue to pay the appellant's salary and allowances and the second respondent will pay a special allowance to the appellant as its seconded staff. On 2 April 2002, the Board of Directors of the second respondent approved payment of a special allowance of RM650 per month for all staff of the second respondent including the appellant. The appellant received a total sum of RM6,764.20 comprising the following:

Basic salary paid by the first respondent	RM4,864.20
Usual allowance paid by the first respondent	RM1,250.00
Special allowance paid by the second respondent	RM 650.00
Total	**RM6,764.20**

[6] After the third respondent was incorporated on 17 October 2002, the appellant's secondment at the second respondent ended and the appellant was seconded to the third respondent as its managing director. The secondment of the appellant at the third respondent was extended several times until 31 December 2011.

[7] Apart from receiving the remuneration referred to in para. [5] above, during the whole period of secondment at the third respondent from 2002 to 2011, the appellant twice received a "one off" allowance of RM100,368 and RM19,237.14 respectively, as part of an incentive payment scheme that was given to all staff of the first respondent seconded to the third respondent. The appellant also had his special allowance increased and he also received bonus.

[8] After his secondment with the third respondent ended in December 2011, the appellant returned to serve the first respondent. For the whole duration of the secondment at the second and the third respondents, the appellant remained an employee of the first respondent.

Proceedings In The High Court

[9] In December 2014, the appellant filed an action against the respondents, claiming for a sum of RM15,619,916.09. The appellant contended that the respondents breached the oral agreement in 2002 entered into between him and the late Dato' Dr Ahmad Fawzi bin Mohd Basri ("Dato' Fawzi"), the then Vice-Chancellor of the first respondent, which was witnessed by Syed Soffian bin Syed Ismail (PW4), the Chief Executive Officer of the second respondent. The appellant contended that *vide* the oral agreement, he was promised additional remuneration during the term of his secondment. The appellant further contended that upon oral instructions of Dato Fawzi, the oral agreement was reduced into a written agreement dated 1 July 2004 (exh. P22).

[10] According to the appellant, in return for his service, the oral agreement provided that the appellant's starting salary is in the range of RM15,000 with a yearly increment and allowances as well as other incentives. On top of that, the appellant is also entitled to be paid the sales commission of at least 10% to 15% for projects secured through the first respondent's companies, bonus and other incentives depending on the company's profits, insurances, and gratuity and compensation if the appellant is terminated for service.

[11] The respondents denied entering into such oral agreement and denied authorising the execution of P22. It was further the case of the respondents that exh. P22 was unknown to them. The respondents explained that the appellant was not paid the alleged additional remuneration for the simple reason that the terms were never offered to the appellant.

[12] The primary issue for determination by the learned trial judge was whether the additional remuneration terms were indeed offered to the appellant. Since the appellant claimed that the purported oral agreement had been reduced to a written form *vide* exh. P22, the learned judge proceeded to consider the validity of exh. P22. In this regard, her Ladyship directed her mind to the following issues, namely whether or not the appellant has shown that the agreement dated 1 July 2004 is authentic and if the answer is in the affirmative, whether the respondents are bound by the said agreement.

[13] Having considered exh. P22, the documentary evidence, the oral evidence of the witnesses and the parties' rivalling contentions, her Ladyship dismissed the appellant's claim. The findings of the learned trial judge may be summarised thus:

(i) the appellant and PW4 were unable to prove that there was in fact an offer made to the appellant on the alleged remuneration and there was also no evidence to prove the purported authorisation by Dr Fawzi for PW4 to execute the agreement;

(ii) the appellant has conscientiously and persistently pursued his claim. He had written numerous letters, prepared working papers and attended meetings in the hope of securing the alleged remuneration. However, nowhere in his correspondence did the appellant mention the agreement dated 1 July 2004. The working paper also did not refer to exh. P22;

(iii) there was a special Board of Directors meeting held on 11 March 2007 and one of the issues was to find a solution to the appellant's remuneration claim. The minutes of the meeting shows that PW4 was present. PW4 could but made no mention of the agreement dated 1 July 2004 let alone produced it;

(iv) exhibit P22 shows that both the appellant and PW4 were the signatories to the agreement and exh. P22 does not bear any witness. As such, it was safe to assume that only the appellant and PW4 were privy to the agreement and it was manifestly clear that the agreement was crucial to the appellant's claim. Yet, both the appellant and PW4 did not see it fit to mention the agreement. If the agreement did exist, the reasonable thing for the appellant and PW4 to do was to inform the paymaster(s) to pay up as the remuneration terms were encased in the agreement; and

(v) in light of PW4's doubtful authorisation and the appellant's and PW4's conduct, exh. P22 was an afterthought and that the appellant has failed to show that the agreement dated 1 July 2004 is authentic.

[14] The learned trial judge had also observed that the appellant was unable to enforce the agreement exh. P22 against the respondents due to the doctrine of privity of contract. Her Ladyship stated that the agreement dated 1 July 2004 appeared to be entered into between the appellant and Syarikat UUM, not between the appellant and any of the respondents herein. If indeed the agreement is enforceable, it can only be enforced against Syarikat UUM.

[15] Aggrieved by the decision of the High Court, the appellant appealed to the Court of Appeal. The appeal was unanimously dismissed.

Proceedings In The Federal Court

[16] The appellant obtained leave to appeal to this court on the following questions of law:

(i) whether the authenticity and validity of an agreement can be challenged and/or disputed in the absence of any vitiating factor(s) such as fraud, forgery, misrepresentation or conspiracy to defraud?

(ii) whether an agreement which had been properly adduced and admitted as evidence pursuant to ss. 91 and 92 of the Evidence Act 1950 can be regarded as the best evidence in proving one's claim against another?

(iii) if the answer to the second question is in the affirmative, whether the agreement is still open to being challenged on the basis that the agreement does not exist and accordingly unenforceable?

(iv) whether it is a prerequisite for a claimant to prove (in writing or otherwise) that the person who executed an agreement on behalf of a company has the requisite authority to do so before the claimant can be entitled to rely on the indoor management rule as propounded in *Royal British Bank v. Turquand* [1843-60] All ER Rep 435? and

(v) whether the concealment principle as established by the Supreme Court of the United Kingdom in *Prest v. Prest & Ors* [2013] 4 All ER 673 in making a third party liable and accountable under an agreement without having to pierce the veil of incorporation is applicable in Malaysia and if so under what circumstances?

Our Analysis/Decision

[17] For the reasons that follow, we had unanimously dismissed the appeal without answering the leave questions.

[18] Learned counsel for the appellant argued that exh. P22 is deemed to be an authentic and a valid agreement in the absence of any vitiating factors such as fraud, forgery, and conspiracy to defraud. Put differently, the appellant took the view that all written documents purporting to be agreements are automatically deemed to be valid and enforceable unless the vitiating factors aforementioned are proven.

[19] With respect, the validity and enforceability of an agreement or a contract are two different and separate issues which are to be dealt with separately. The validity of a contract is governed by s. 2(e) of the Contracts Act 1950 which provides that every promise and every set of promises, forming the consideration for each other, is an agreement.

[20] For there to be a valid agreement, basically there must be an offer, acceptance, consideration and an intention to create legal relations. In relation to agreements made on behalf of corporations, there is the issue of whether the parties have due authority to enter into the agreement and whether internal procedures, for example Board approvals or resolutions have been obtained; and if internal procedures were not adhered to, whether the *Turquand* rule would apply to save the agreement.

[21] Only where there is a valid agreement in existence, does the enforceability of the agreement comes into play. And it is at this stage that the vitiating factors alluded to by learned counsel for the appellant, if at all, would be considered by the court.

[22] In the instant appeal, the agreement dated 1 July 2004 although was admitted as an exhibit by the High Court, was found to be not an authentic agreement. This finding of fact was made upon consideration of the factual circumstances, particularly due to the absence of authority and non-compliance with internal procedures of the respective respondent companies, and not due to the presence of any vitiating factors (see *G.H. Trietel on The Law of Contract; John Lo Thau Fah v. Face Resort Berhad* [2007] 8 CLJ 484; *KL Engineering Sdn Bhd & Anor v. Arab Malaysia Finance Bhd* [1994] 2 CLJ 480; *Kang Hai Holdings Sdn Bhd & Anor v. Lee Lai Ban* [2018] 2 CLJ 550; *Letchumanan Chettiar Alagappan (As Executor To SL Alameloo Achi (Deceased) & Anor v. Secure Plantation Sdn Bhd* [2017] 5 CLJ 418).

[23] On the facts of the present appeal, we agreed with the courts below that the appellant failed to prove his claim. He failed to prove that the terms of the alleged remuneration were in fact offered to him and/or that the second and the third respondents had authorised or approved the execution of exh. P22. The findings of the High Court were not perverse given the testimony of the respondents' witnesses who were former directors of the second and the third respondents that they never approved and had no knowledge of document exh. P22. Their testimonies were supported by the fact that there was absent of any contemporaneous document in the form of the Board of Director's resolution or approval to pay the amount claimed by the appellant. In other words, the appellant failed to prove the contents of exh. P22.

[24] The appellant attempted to overcome the respondents' case by invoking the *Turquand* rule, whereby this rule, an outsider contracting with a company in good faith is entitled to assume that the internal requirements and procedures of the company have been complied with. In this regard, we noted that the appellant initially had pleaded that exh. P22 was a contract between the appellant and the third respondent. The appellant then amended his statement of claim to plead that exh. P22 was a contract between him and the second respondent.

[25] However, in their testimonies, the appellant and his witnesses, PW4 and PW2 stated that it was at the third respondent's Board of Director's meetings held on 19 June 2003 and on 29 June 2004 that the terms contained in P22 were approved by the third respondent's Board. It was also the evidence of PW4 that he was authorised to execute exh. P22 by the third respondent's Board of Directors. At the risk of repetition, those minutes however do not contain any such discussion or approval of the terms of exh. P22 and neither do they contain any authorisation of PW4 to execute exh. P22.

[26] In light of the above, we find that the appellant's reliance on the *Turquand* rule is misplaced as the facts clearly show that the appellant is not an outsider but an insider to the third respondent, being its Managing Director from 2003 to 2011 (see *Pekan Nenas Industries Sdn Bhd v. Chang Ching Chuen & Ors* [1998] 1 CLJ 793).

[27] It was also contended by learned counsel for the appellant that since exh. P22 has been properly adduced and admitted as evidence pursuant to ss. 91 and 92 of the Evidence Act 1950, it is not open to the respondents to challenge the validity of P22.

[28] We found that the written agreement exh. P22 was all along denied by the respondents. The document was placed in Part C of the common agreed bundle of documents, which means that its authenticity, existence and contents are disputed. During trial, the appellant produced in court what he claimed to be the original copy of the said document. Learned counsel for the appellant sought to mark it as an exhibit which was objected to by learned counsel for the respondents. The ground of objection was that its existence was never known to and was never authorised by the respondents. The learned trial judge took the view that since the appellant had produced what he claimed to be the original document, the document could be marked as an exhibit and the respondent's counsel could later cross examine the appellant on the existence and validity of the document.

[29] Without reproducing the provision, it is trite that s. 92 of the Evidence Act 1950 only excludes oral evidence as to contradict the terms of the agreement. When there is a plea denying the agreement, oral evidence is admissible in support of that plea. Here, the respondents were not seeking to admit evidence to contradict the terms of the agreement but to show the court that there was never an agreement in the first place. That section is not attracted when the existence and validity of the agreement is in question (see *Sri Kelangkota-Rakan Engineering JV Sdn Bhd & Ors v. Arab-Malaysian Prima Realty Sdn Bhd & Ors* [2001] 1 CLJ 779; *Global Globe Property (Melawati) Sdn Bhd v. Jangka Prestasi Sdn Bhd* [2020] 6 CLJ 1).

[30] Granted that the learned trial judge admitted the document and marked it as exh. P22, her Ladyship ultimately found that the document was an afterthought. On the totality of the evidence, it could not be said that her finding was wrong or against the weight of evidence. For completeness, we wish to state that quite apart from the issue of admissibility of exh. P22, there was also the issue of probative value of the document. On our part, we found that exh. P22 had no probative value.

[31] As for the issue of concealment raised by learned counsel for the appellant, with respect we found that the issue was not pleaded and no evidence was led to show that the second and the third respondents' companies which are owned by the first respondent were being set up solely

as a *façade* to conceal or to deprive the appellant of his claim for the purported additional remuneration. *Prest v. Prest* which was adverted to by the appellant in leave question 5 has no relevance to this appeal.

Conclusion

[32] We found that the decision of the trial judge in dismissing the appellant's claim, which was affirmed by the Court of Appeal was not plainly wrong. There was thus no reason for our appellate intervention. The appeal was accordingly dismissed with costs. And we did not consider it necessary to answer the leave questions.